United Nations CRC/C/KEN/CO/3-5

Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the combined third to fifth periodic reports of Kenya*

I. Introduction

1. The Committee considered the combined third to fifth periodic reports of Kenya (CRC/C/KEN/3-5) at its 2085th and 2087th meetings (see CRC/C/SR.2085 and 2087), held on 21 January 2016, and adopted the following concluding observations at its 2104th meeting (see CRC/C/SR.2104), held on 29 January 2016.

2. The Committee welcomes the submission of the combined third to fifth periodic reports of the State party and the written replies to the list of issues (CRC/C/KEN/Q/3-5/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the ratification of or accession to:

(a) The Convention on the Rights of Persons with Disabilities, in 2008;

(b) The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, in 2007.

4. The Committee also notes with appreciation the adoption of the following legislative measures:

(a) The Protection Against Domestic Violence Act (No. 2 of 2015);

(b) The Victim Protection Act (No. 17 of 2014);

(c) The Marriage Act (No. 4 of 2014), setting the minimum age for marriage at 18 years for all types of marriages;

* Adopted by the Committee at its seventy-first session (11-29 January 2016).

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(d) The Persons Deprived of Liberty Act (No. 23 of 2014), which obliges the authorities to notify within 48 hours a parent or guardian of a child who is detained or deprived of liberty;

(e) The Basic Education Act, in 2013;

(f) The Citizenship and Immigration Act, in 2011, which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children;

(g) The Prohibition of Female Genital Mutilation Act, in 2011;

(h) The Constitution of Kenya, revised in 2010, which stipulates the right of the child to have his or her best interests taken as a primary consideration.

5. The Committee also welcomes the following policy measures:

(a) The National Plan of Action for Children, 2015-2022;

(b) The National Plan of Action for Children, 2008-2012;

(c) The National Plan of Action Against Sexual Exploitation of Children in Kenya, 2013-2017.

III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44 (6))

The Committee's previous recommendations

6. **The Committee recommends that the State party take all necessary measures to address its previous recommendations of 2007 (CRC/C/KEN/CO/2) that have not been implemented or sufficiently implemented, in particular those related to non-discrimination (para. 25), corporal punishment (para. 35), harmful traditional practices (para. 54) and administration of juvenile justice (para. 68).**

Legislation

7. The Committee welcomes the adoption in 2010 of the revised Constitution, which explicitly recognizes certain rights of the child. However, the Committee remains concerned that the harmonization of national legislation, including the Children Act (2001), with the Convention and the Constitution has not been completed.

8. **The Committee urges the State party to expedite the completion of the harmonization of national legislation and regulations with the Convention, including by adopting new legislation to replace the Children Act (2001), and to ensure the active and meaningful participation of children and civil society organizations in elaborating the new legislation.**

Comprehensive policy and strategy

9. The Committee welcomes the adoption and implementation of the National Plan of Action for Children, 2008-2012, and its positive outcomes, in particular in the areas of health and education. However, the Committee is concerned that substantial information on the National Plan of Action for Children, 2015-2022, was not provided, including how the Plan will be financed, how the service delivery gap caused in the process of devolution will be addressed, and the persistent inequality in the enjoyment of the rights of the child.

10. **The Committee recommends that the State party allocate adequate resources for the implementation of the National Plan of Action for Children, 2015-2022, that it ensure coordination between the national and county levels to minimize the service delivery gap in transitioning to the devolved system of governance and that it place greater focus on reducing inequality in the enjoyment of the rights of the child.**

Allocation of resources

11. The Committee notes that the amount of budget allocation to the social sectors has increased during the period under review. However, the Committee is concerned that:

(a) Increased budget allocations in certain areas, including education and social protection, still do not match the overwhelming needs in these sectors;

(b) No measures have been taken on budget tracking from a child rights perspective, either at the national level or at the level of devolved governments;

(c) Despite the efforts made to eradicate corruption, it remains pervasive in the State party and continues to divert resources that are necessary for implementation of the rights of the child.

12. **In the light of its day of general discussion in 2007 on resources for the rights of the child and the responsibility of States, the Committee recommends that the State party:**

(a) **Increase and prioritize allocations to ensure the implementation of the rights of the child at all levels, including at devolved counties' level, in order to fully implement article 4 of the Convention;**

(b) **Apply budget tracking from a child-rights perspective, both at the national and devolved counties' levels, with a view to monitoring the adequacy, efficacy and equitability of the distribution of resources allocated for children;**

(c) **Build the capacity of devolved counties to deliver services for children, including by developing standards and guidance on management of human and financial resources;**

(d) **Take immediate and more effective measures to combat corruption and strengthen institutional capacities to effectively detect, investigate and prosecute corruption, including in the health-care, education, justice and law enforcement sectors;**

(e) **Seek technical assistance from, inter alia, the United Nations Children's Fund (UNICEF) in this regard.**

Data collection

13. The Committee notes that a number of information management systems on several aspects of the rights of the child are being developed. However, the Committee remains concerned that there is neither a comprehensive system to monitor and track the realization of all rights of the child at the national and county levels, nor a sufficient disaggregation of the data on children to enable planning and resource allocation.

14. **With reference to the Committee's general comment No. 5 (2003) on general measures of implementation, the Committee recommends that the State party:**

(a) **Expedite establishment of a comprehensive data collection system that covers all areas of the Convention, including those relevant to child poverty, both at the national and county levels;**

(b) **Ensure disaggregation of data by age, sex, disability, geographic location, ethnic origin and socioeconomic background in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability and children in conflict with the law, and actively use such analysis for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention;**

(c) **Take into account the conceptual and methodological framework set out in the Office of the United Nations High Commissioner for Human Rights (OHCHR) publication entitled *Human Rights Indicators: A Guide to Measurement and Implementation* when defining, collecting and disseminating statistical information;**

(d) **Seek technical cooperation with, among others, UNICEF, the International Labour Organization (ILO), OHCHR and regional mechanisms in this regard.**

Independent monitoring

15. The Committee welcomes the re-establishment of the Kenya National Commission on Human Rights in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). However the Committee remains concerned that the Commission continues not to place specific emphasis on the rights of children in discharging its mandate.

16. **With reference to the Committee's general comment No. 2 (2002) on the role of independent human rights institutions in the promotion and protection of the rights of the child, the Committee reiterates its recommendations that the State party:**

(a) **Ensure that the Kenya National Commission on Human Rights pays special attention to the concerns of children, for example by establishing a children's rights unit which is in charge of promotion and protection of the rights of the child;**

(b) **Allocate adequate human and financial resources to the Kenya National Commission on Human Rights to enable it to discharge all of its mandated activities in line with the Paris Principles.**

Cooperation with civil society

17. The Committee notes as positive the participation of civil society organizations in the monitoring of the implementation of the Convention through the National Council for Children's Services. However, the Committee is concerned that the Public Benefits Organizations Act (2013) which prescribes the governance of civil society organizations has not been implemented and notes that there is concern that it may be amended with provisions that could undermine the activities of civil society organizations.

18. **The Committee recommends that the State party expedite the implementation of the Public Benefits Organizations Act (2013) and that it foster a conducive environment for, and the independence of, civil society organizations working on children's rights.**

Children's rights and the business sector

19. The Committee is concerned that the weak regulation of activities of business enterprises results in:

(a) Illegal acquisition of public lands, including the premises of public schools, by private individuals and business enterprises;

(b) Illegal dumping of toxic wastes and other forms of environmental pollution, which have a serious impact on children's health;

(c) Wide prevalence of child labour, including the commercial sexual exploitation of children, and human trafficking for child labour.

20. **With reference to the Committee's general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee recommends that the State party:**

(a) **Establish a clear regulatory framework for business enterprises operating in the State party to ensure that their activities do not negatively affect child rights or breach environmental, health or labour standards, especially those relating to children;**

(b) **Monitor the compliance of business enterprises with such regulations, as well as with international and national environmental, health and labour standards, and sanction appropriately and provide remedies when violations occur;**

(c) **Be guided by the United Nations Guiding Principles on Business and Human Rights (see A/HRC/17/31, annex).**

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

21. The Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly in respect of girls, children with disabilities, children with HIV/AIDS, refugee children, indigenous children, Nubian children, children in street situations and children from disadvantaged or marginalized families.

22. **The Committee urges the State party to:**

(a) **Revise all its legislation and policies in order to bring them into full compliance with article 2 of the Convention, and ensure full implementation of all legal provisions and policies;**

(b) **Intensify efforts to eliminate discrimination, particularly patriarchal attitudes and gender stereotypes, and ensure that a wide range of stakeholders, including girls and all sectors of society, are involved in such efforts so as to facilitate social and cultural change and to create an environment that promotes equality.**

Best interests of the child

23. The Committee welcomes recognition in the Constitution of the right of the child to have his or her best interests taken as a primary consideration. However, the Committee is concerned that this right is often not respected in informal justice systems or in dispute resolution outside of courts of justice, in particular with regard to cases of sexual offences.

24. **With reference to the Committee's general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is consistently applied in all judicial proceedings and decisions, including formal and informal justice systems and other forms of dispute resolution, such as mediation, that are relevant to and have an impact on children. The Committee further recommends that the State party ensure that this right is also consistently applied in all legislative and administrative proceedings and decisions, as well as in all policies,**

programmes and projects that are relevant to or have an impact on children. The State party is therefore encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving this due weight as a primary consideration.

Right to life, survival and development

25. The Committee is seriously concerned about killings of, and trafficking of, children with albinism for body parts, including about such acts that are committed by family members.

26. **The Committee urges the State party to:**

(a) **Adopt a comprehensive strategy, including awareness-raising, to fully ensure the immediate and long-term protection of children with albinism and to address the root causes of the violence they suffer;**

(b) **Strengthen awareness-raising campaigns against superstitious beliefs concerning children with albinism;**

(c) **Expedite the investigation and prosecution of all cases involving children with albinism so that no perpetrator can escape with impunity, and provide the victims with rehabilitation and redress.**

Respect for the views of the child

27. The Committee welcomes the establishment of the Kenya Children's Assembly at national, county and sub-county levels. Nevertheless, the Committee is concerned that the Children's Assembly is not open or accessible to certain groups of children, such as refugee children and children with disabilities.

28. **With reference to the Committee's general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:**

(a) **Make the Children's Assembly at national, county and sub-county levels open and accessible to all children in the State party without discrimination, including refugee children and children with disabilities;**

(b) **Actively involve children at national and county levels, including through the Children's Assemblies, in the development of law, policy and budget relevant to children's issues and in the monitoring of their implementation.**

C. Civil rights and freedoms (arts. 7, 8 and 13-17)

Birth registration and nationality

29. The Committee welcomes the adoption of the Citizenship and Immigration Act (2011) which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children, as well as the substantial increase in the number of birth registrations. Nevertheless, the Committee is concerned that:

(a) Free and universal birth registration has not been achieved;

(b) The proportion of births registered has been stagnating in recent years, with substantially lower rates of birth registration in rural and remote areas;

(c) Some groups of children, such as refugee children, children of Nubian descent, Makonde children, indigenous Somali children in Kenya, children with mothers in custody and intersex children, face difficulty in obtaining birth registration;

(d) Children of stateless persons and migrants aged between 8 and 18, including those who belong to the Nubian, Pemba, Galj'el and Makonde communities, may not have obtained Kenyan nationality despite the measures introduced in the Citizenship and Immigration Act (2011).

30. **The Committee urges the State party to:**

(a) **Expedite the adoption of a law that provides for universal and free birth registration at all stages of the registration process;**

(b) **Further strengthen various efforts to ensure the birth registration of all children, in particular in rural and remote areas, including through mapping out and registering those who have not been registered at birth;**

(c) **Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), and finalize the draft policy on internally displaced persons and a set of regulations to operationalize the Act;**

(d) **Consider acceding to the Convention relating to the Status of Stateless Persons, of 1954, and to the Convention on the Reduction of Statelessness, of 1961;**

(e) **Fully implement the decision of the African Committee of Experts on the Rights and Welfare of the Child in the case entitled "Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. the Government of Kenya" (decision No. 002/Com/002/2009);**

(f) **Seek technical assistance from the Office of the United Nations High Commissioner for Refugees and UNICEF, among others, for the implementation of these recommendations.**

Freedom of expression, association and peaceful assembly

31. The Committee notes that the Constitution (2010) guarantees freedoms of expression, association and peaceful assembly to all Kenyans. Nevertheless, it is concerned that the exercise of these freedoms by children is not always fully respected in practice, such as in cultural activities in which children may express their political view or in demonstrations organized by children.

32. **The Committee recommends that the State party take all measures to fully guarantee freedoms of expression, association and peaceful assembly for boys, girls and adolescents, as provided under the Constitution and the Convention, including through raising the awareness and building the capacity of families, teachers and government officials to respect these freedoms of children.**

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Freedom of the child from all forms of violence

33. The Committee welcomes the enactment of the National Police Service Act (2011) which prohibits torture and degrading treatment by the police, the Basic Education Act (2013) which outlaws corporal punishment at schools, the Protection Against Domestic Violence Act (2015) and the Prevention of Female Genital Mutilation Act (2011). The

Committee also welcomes the establishment of toll-free, 24-hour child helplines. Nevertheless, the Committee is concerned at:

(a) Repeated reports of police violence against children, including at Langa'ata Road primary school and Dadaab refugee camp;

(b) The high prevalence of domestic violence against boys and girls, and of gender-based violence against girls, including sexual and physical violence in both the public and domestic spheres;

(c) The persistent practice of corporal punishment at home and in schools despite its prohibition under the Constitution, and some legislation authorizing corporal punishment that is still pending for revision;

(d) Lack of access to justice for child victims of violence, particularly in cases of sexual violence and harmful practices, due to social stigma, pressure from family members, low rates of investigation and prosecution, frequent delays in court proceedings, lenient sanctions imposed, the risk of revictimization in the justice system and the lack of legal aid and other supports;

(e) The limited support available for child victims of violence and girls escaping from harmful practices, including the provision of safe accommodation and support for access to education.

34. **With reference to the Committee's general comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, and/or general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:**

(a) **Develop a comprehensive national strategy and a national coordinating framework to prevent and address all forms of violence against children;**

(b) **Enforce effectively the National Police Service Act (2011) to prevent and prohibit ill-treatment of children by the police and investigate thoroughly and promptly all allegations so as to ensure that perpetrators are held accountable;**

(c) **Revise all laws and regulations authorizing corporal punishment, promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and raise the awareness of parents, guardians, teachers and the general public about the negative impact of corporal punishment on children;**

(d) **Promptly investigate, prosecute and punish perpetrators of all forms of violence against children in accordance with the severity of the violation, and actively discourage the use of mediation in cases of sexual violence and domestic violence;**

(e) **Provide legal aid to child victims of violence and children who need protection;**

(f) **Reinforce sustainable public education and awareness-raising on the harmful effects of violence against children, including corporal punishment, harmful practices and domestic violence;**

(g) **Establish more child protection centres for child victims of violence and children in need of care and protection, including those fleeing from harmful practices, and allocate adequate human, technical and financial resources to the provision of protection and support services.**

Harmful practices

35. The Committee is concerned that despite its legal prohibition, harmful practices such as female genital mutilation, child marriage and "beading" of girls are still persistent. The Committee is also concerned that the medicalization of female genital mutilation has reportedly increased.

36. **The Committee urges the State party to:**

(a) **Enforce effectively the prohibition of female genital mutilation, including that practised by health practitioners, child marriage, and other forms of harmful practices;**

(b) **Continue efforts to address the root causes of such practices and implement culturally appropriate measures to eliminate them;**

(c) **Prohibit any out-of-court settlements in cases of harmful practices.**

Sexual exploitation and abuse

37. The Committee is concerned about the high level of child prostitution and child pornography, particularly in the tourism and travel sector.

38. **The Committee recommends that the State party implement effectively the Sexual Offences Act 2006, and the National Plan of Action Against Sexual Exploitation of Children in Kenya, 2013-2017.**

E. Family environment and alternative care (arts. 5, 9-11, 18 (1 and 2), 20, 21, 25 and 27 (4))

Family environment

39. The Committee welcomes the recognition under the Constitution (2010) of the equal rights of children born within and out of wedlock. However, the Committee is concerned that:

(a) The Marriage Act (2014) legally recognizes polygamous marriage concluded under Islamic or customary law as well as other discriminatory practices which undermine equal parenting rights and responsibilities between women and men and have adverse effects on children, especially girls;

(b) There is still a large unmet need among parents, including teenage parents, for parenting skills and education;

(c) There is weak enforcement of court orders on child maintenance within the State party and abroad.

40. **The Committee recommends that the State party:**

(a) **Repeal all provisions in family laws, including the Marriage Act (2014), that discriminate against women and have a negative impact on their children, such as those that authorize polygamy, and prohibit other discriminatory practices that have an adverse impact on women and children, such as "wife inheritance";**

(b) **Provide further support to families, including teenage parents, in the form of family counselling, parenting education and the provision of financial allowances;**

(c) **Take effective measures to enforce child maintenance orders both within the State party and abroad, including by providing public legal aid to parents and**

caregivers seeking maintenance for children under their responsibility, and consider ratifying or acceding to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

Children deprived of a family environment

41. The Committee is concerned that:

(a) The State party still has a large number of orphans and vulnerable children who are deprived of a family environment, and a large number of children are living in care institutions despite the Government's policy to prioritize family-based care for children;

(b) The majority of childcare institutions, such as the Charitable Children's Institutions, are not yet registered, the inspection and monitoring of the care provided at childcare institutions are weak, and there is no complaints mechanism through which children can denounce violence in care institutions.

42. **Drawing the State party's attention to the Guidelines for the Alternative Care of children (General Assembly resolution 64/142, annex), the Committee recommends that the State party:**

(a) **Ensure adequate safeguards and clear criteria, based on the needs as well as best interests of the child, for determining whether a child should be placed in alternative care;**

(b) **Support and facilitate family-based care for children wherever possible and establish a system of foster care for children who cannot stay with their families, with a view to reducing the institutionalization of children;**

(c) **Expedite the registration of all Charitable Children's Institutions, ensure thorough and transparent periodic reviews of the placement of children in foster care and institutions, and monitor the quality of the care therein, including by providing accessible channels for reporting, monitoring and remedying maltreatment of children.**

Adoption

43. While the Committee notes the information provided by the State party that it will lift a moratorium on national adoption shortly, the Committee is concerned that the amendment of laws and regulations on adoption, including relevant provisions under the Children Act (2001), is still pending.

44. **The Committee urges the State party to expedite the amendment of the Children Act (2001) and other regulations on adoption in line with article 21 of the Convention. The Committee also recommends that the State party accelerate the harmonization of national legislation with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and ensure that all safeguards provided in the said Hague Convention are met when children are adopted to countries that are not parties to the said Hague Convention.**

F. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1-3) and 33)

Children with disabilities

45. The Committee notes that progress has been made in relation to early detection, prevention and mitigation of disabilities. However, the Committee is concerned that:

(a) Children with disabilities, in particular those living in rural areas, are often stigmatized, confined at home, denied opportunities for development or abandoned;

(b) There is a lack of the disaggregated data that are necessary for designing a comprehensive strategy for the inclusion of children with disabilities;

(c) Many mainstream schools are not equipped for inclusive education, some refuse admission to children with disabilities, and specialized schools are not available, accessible or affordable;

(d) Health care and reasonable accommodation for children with disabilities are mainly unaffordable.

46. **With reference to the Committee's general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to set up a comprehensive strategy, based on disaggregated statistical data, for the inclusion of children with disabilities. It also recommends that the State party:**

(a) **Intensify measures, including awareness-raising, to combat stigma against children with disabilities, including children with psychosocial or intellectual disabilities, and to encourage parents of children with disabilities to support the fullest possible social integration and individual development of their children, in particular in rural areas;**

(b) **Give priority to inclusive education at mainstream schools over special schooling and allocate adequate human, financial and technical resources for schools to provide inclusive education in an effective way, including for refugee children with disabilities;**

(c) **Fully implement the Persons with Disabilities Act (2003) in line with article 23 of the Convention and the Convention on the Rights of the Persons with Disabilities and ensure that children with disabilities have effective access to health services, including rehabilitation services, free of charge whenever possible.**

Health and health services

47. The Committee notes the reduction in under-five mortality and the initiatives for making health care for children under five and maternity health free of charge. Nevertheless, the Committee remains concerned that:

(a) Devolution reform has negatively affected the provision of health services around the country;

(b) Financing for the provision of health-care services relies heavily on external sources, including funding for HIV/AIDS, which undermines the sustainability of service deliveries;

(c) Costs for health-care services remain a barrier for accessing basic health-care services;

(d) Regional disparities have increased regarding newborn mortality and under-five mortality, with significantly higher mortality in the arid, semi-arid and rural areas;

(e) As noted during the constructive dialogue, child immunization coverage is declining, partly due to objections against child vaccination campaigns by some members of the Catholic Church.

48. **With reference to the Committee's general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party:**

(a) **Take measures to ensure that there will be no disparities among counties in providing quality and timely health services;**

(b) **Progressively expand the coverage of free health care for children to children above 5 years of age and expand the free maternity health care to outpatient care, with a focus on eliminating geographical disparities;**

(c) **Increase the overall national and county budget allocations to the health sector to move progressively towards the target in the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases of 15 per cent, in order to strengthen the sustainability of the national health system;**

(d) **Reinforce its effort to reduce child mortality, focusing on reducing child mortality in arid and semi-arid and rural areas. Take guidance from the OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age (A/HRC/27/31) in this regard;**

(e) **Intensify efforts to vaccinate all children under the age of 1, in line with international standards, with a focus on children belonging to pastoral and other mobile communities;**

(f) **Seek financial and technical assistance from UNICEF and the World Health Organization, among others, in this regard.**

Adolescent health

49. The Committee is concerned that:

(a) The rates of early pregnancy and of maternal mortality among adolescents, including due to unsafe abortions, remain high, with a restrictive and inconsistent legal framework on abortion undermining adolescents' access to safe and legal abortion and post-abortion care. Pregnant girls face discrimination in accessing maternity health care, due to its cost as well as to the negative attitude of health-care workers against them, and the lack of quality health-care services tailored to them;

(b) The level of drug and substance abuse among young people is high.

50. **With reference to the Committee's general comment No. 4 (2003) on adolescent health and development, the Committee recommends that the State party:**

(a) **Reinforce its efforts to prevent teenage pregnancies, unsafe abortions and sexually transmitted diseases, including HIV/AIDS, and provide care for those affected. In this regard, pay particular attention to the underlying factors, such as gender inequality, sexual violence, harmful practices, not finishing education, limited social protection, and lack of access to age-appropriate and quality sexual and reproductive health education and information and supportive health services;**

(b) Decriminalize abortion in all circumstances and review its legislation with a view to ensuring that girls have access to safe abortion and post-abortion care services and that their views are always heard and respected in abortion decisions, and provide clear guidance to health practitioners and information to adolescents on safe abortion and post-abortion care;

(c) Fully implement free maternity health care and combat discrimination against pregnant teenagers, adolescent mothers and their children;

(d) Take guidance from the OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22);

(e) Implement education programmes and campaigns to promote healthy lifestyles and to prevent drug and substance abuse by children, monitor the use of drugs and other substances at schools with the participation of children, and develop accessible and youth-friendly drug and substance dependence treatment and harm reduction services as well as life skills education.

HIV/AIDS

51. The Committee notes the intensive policy and programmatic efforts made by the State party on prevention and care with regard to HIV/AIDS during the period under review. However, it is concerned that:

(a) Prevalence and new infections of HIV/AIDS among children remain high, with high levels of mortality among adolescents, limited access to antiretroviral therapy, and a stagnation of progress in reducing mother-to-child transmission;

(b) Stigma and discrimination against children living with HIV/AIDS remain persistent, leading to neglect and abandonment of children.

52. **With reference to the Committee's general comment No. 3 (2003) on HIV/AIDS and the rights of the child, it recommends that the State party:**

(a) Strengthen its efforts to combat the spread and effects of HIV/AIDS by effectively implementing relevant national policies, strategies, guidelines and programmes on HIV/AIDS, and scale up efforts to prevent new HIV infections in children, including through mother-to-child transmission;

(b) Systematically provide comprehensive information about HIV/AIDS and sex education to youth, including confidential counselling and testing and the promotion of modern contraceptive use;

(c) Take effective measures to combat stigma and discrimination against children living with or affected by HIV/AIDS, including in access to health care and education, inheritance and the family environment;

(d) Ensure active participation by children and adolescents living with or affected by HIV in the development and implementation of relevant programmes and strategies.

Breastfeeding

53. The Committee is concerned about the lack of systematic follow-up regarding the nourishment of infants and breastfeeding, which has brought down the exclusive breastfeeding rate of children under 6 months to 33 per cent. It is also concerned about partial application of the regulation on breast milk substitutes. The Committee also notes

that women working in the informal sector are not covered by the maternity leave regulation.

54. **The Committee recommends that the State party establish measures to accelerate adequate nourishment of children and breastfeeding, by sensitizing society through awareness-raising campaigns, building the capacity of health sector professionals, supporting breastfeeding mothers with specialists, revitalizing the "Child-Friendly Hospitals" initiative, and fully implementing the International Code of Marketing of Breast-milk Substitutes.**

Standard of living

55. The Committee welcomes the explicit recognition of the rights to housing, sanitation, food, water and social security in the Constitution (2010), the decrease in the proportion of malnourished children, and the significant increase in the number of children covered by the Cash Transfer Programme for Orphans and Vulnerable Children. Nevertheless, the Committee is concerned that:

(a) Many of the laws, policies and strategies to operationalize constitutional rights to housing, sanitation, food, water and social security have not been adopted and implemented;

(b) Major geographical disparity exists in the enjoyment of the rights to housing, sanitation, food, water and social security, with worse conditions particularly in arid and semi-arid lands and in informal settlements in peri-urban and urban areas;

(c) Forced evictions and displacements of people, including children, have taken place due to development projects and environmental conservation;

(d) Lack of access to sanitation and safe drinking water, as well as persistent child malnutrition, including micronutrient deficiencies, pose a serious public health concern in respect of children, and contribute to recurring outbreaks of diseases such as cholera and to high child mortality;

(e) The negative impact of climate change, combined with population growth and unsustainable development projects, is adding further pressure on children's access to water and sanitation and on their food and nutrition security in arid and semi-arid lands;

(f) The Cash Transfer Programme for Orphans and Vulnerable Children does not cover the cost of health care except in respect of children under 5 years of age, and allocates benefits by household regardless of the number of children in each household. Its coverage has not been extended to children with disabilities, children in street situations, children in care institutions and refugee children. Information on the programme is not well disseminated among beneficiaries.

56. **The Committee recommends that the State party:**

(a) **Enact legislation to operationalize constitutional rights to housing, sanitation, food, water and social security, including the Water Bill (2012) and the Social Protection Bill (2014);**

(b) **Strengthen focus on the above-mentioned rights in national development plans, in particular the rights to sanitation and water, and adopt and implement national policies and strategies to implement these rights, with an emphasis on eliminating geographic inequalities;**

(c) **Ensure that the policies, projects and practices on development and the governance of land, including those which may entail relocation, are in line with relevant international standards, including the basic principles and guidelines on**

development-based evictions and displacement (see A/HRC/4/18, annex 1) and with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, adopted by the Committee on World Food Security of the Food and Agriculture Organization of the United Nations in 2012;

(d) **Build capacity of county governments and allocate sufficient human, technical and financial resources to strengthen the response and accountability of county governments to facilitate access to water and sanitation at the community level;**

(e) **Adopt policies and institutional arrangements to enhance a comprehensive, multisectoral and participatory approach to food and nutrition security addressing root causes of malnutrition, and reduce overreliance on external funding for food and nutrition security programmes at the national and county levels in order to strengthen their sustainability;**

(f) **In developing policies or programmes to address the issues of climate change and disaster risk management, including the National Adaptation Plan, integrate measures to protect children's rights to housing, sanitation, food, water and health and ensure the full and meaningful participation of communities at risk, including children, at both the national and the county levels;**

(g) **Develop a social health insurance scheme covering all children living in poverty, including those with disabilities;**

(h) **Progressively expand, with a clear timeline, the Cash Transfer Programme for Orphans and Vulnerable Children in order to cover the costs for the health care of all beneficiaries and to cover a wider scope of vulnerable children, including children with disabilities, children in street situations, children in care institutions and refugee children.**

G. Education, leisure and cultural activities (arts. 28-31)

Education, including vocational training and guidance

57. The Committee welcomes the increase in enrolment and completion rates in respect of primary and secondary education. However, the Committee is concerned about:

(a) The very low school enrolment and completion rates in the arid and semi-arid areas and in urban informal settlements, as well as the low retention rate of teachers in these areas which undermines the quality of education;

(b) Higher barriers faced by girls, compared to boys, in obtaining education, due to heavy domestic workloads, adolescent marriages and pregnancies, and negative societal attitudes towards the importance of educating the girl child, as well as unaffordable menstrual protection and sanitary wear and the lack of sanitation facilities in schools;

(c) The Basic Education Act (2013) allowing schools to charge tuition fees to non-Kenyan citizens;

(d) The low quality of education, and the rapid increase in private and informal schools, including those funded by foreign development aid, providing substandard education and deepening inequalities.

58. **With reference to the Committee's general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:**

(a) Prioritize the elimination of geographical and gender disparities through targeted programmes and resource allocations that improve primary access, completion rates, retention, and transition to secondary school;

(b) Guarantee the legal right to free compulsory education for all, without direct or hidden costs, including for non-Kenyan citizens such as, in particular, refugee children. In doing so, prioritize the provision of quality, free primary education at public schools over the provision of education at private schools, including informal low-cost schools, and regulate and monitor the quality of education provided by private schools in line with the Convention;

(c) Address the root causes of the low educational attainment of girls, including stereotypes that are discriminatory against girls, and harmful practices.

H. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)

Asylum-seeking and refugee children

59. The Committee commends the State party's efforts to accept a large number of asylum seekers and refugees from neighbouring countries. However, the Committee is concerned that the State party's long-term encampment policy and certain proposals and responses to the heightened security situation in the State party do not fully respect and protect the rights of asylum-seeking and refugee children, including:

(a) Proposals on encampment of all asylum seekers and refugees in refugee camps and suspension of registration of asylum seekers in urban areas;

(b) Proposals on the closure of refugee camps;

(c) The relocation and deportation of refugees without due process, which has caused family separation and has left refugee children unaccompanied and has disrupted their education.

60. **With reference to the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee urges the State party to:**

(a) Ensure all security operations and policies relevant to asylum seekers and refugees comply fully with international human rights and refugee law which the State party has ratified, in particular the rights of the child;

(b) Ensure that returns of refugees, including refugee children, will not occur unless their returns are voluntary and carried out in safety and dignity;

(c) Revise the policy on long-term encampment of refugees and allow greater opportunities for refugees to reside outside designated areas;

(d) Uphold the rights of the child to family unification and to have his or her best interests taken as a primary consideration in all policies and procedures on refugees and asylum seekers.

61. The Committee welcomes the issuance of "refugee identity passes" to refugee children. However, the Committee is also concerned that individual identification cards, which are used as a basis for accessing social services such as education or health care, are issued only to those who are living in urban areas and are over 16 years old or recognized as unaccompanied or separated children.

62. **The Committee recommends that the State party issue individual identity documentation to all refugee and asylum-seeking children regardless of their age, residence or status of family unification in order to guarantee their refugee or asylum-seeking status and their access to essential services.**

Internally displaced children

63. The Committee welcomes the adoption of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012) to resettle people displaced by the 2007-2008 post-election violence. Nevertheless, the Committee is concerned that:

(a) Some internally displaced persons in Rift Valley, including children, remain in need of durable solutions and legal protection;

(b) Reconstruction of houses and public facilities has reportedly not commenced for persons displaced prior to 2007-2008 violence, such as those in Moyale and Marsabit.

64. **The Committee recommends that the State party:**

(a) **Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), finalize the draft policy on internally displaced persons, and issue regulations to operationalize the Act;**

(b) **Facilitate conflict resolution, peacebuilding, resettlement and reconstruction for persons displaced prior to the 2007-2008 violence, in accordance with the peace declaration of February 2014;**

(c) **Accede to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009).**

Children in armed conflicts

65. The Committee is concerned about the "radicalization" of children and their recruitment into non-State armed groups, mainly due to the social and economic marginalization of certain religious or ethnic groups. The Committee is also concerned about:

(a) Certain counter-terrorism and security measures, such as mass raids, which do not comply with international human rights standards, including the Convention, and which have caused family separation, arbitrary detentions of children, and negative psychological impacts on children affected by the measures, such as fear and feelings of collective punishment;

(b) Increased attacks on educational institutions and teachers by non-State armed groups, leading to mass deserting by teachers and the closing down of schools in the affected areas.

66. **The Committee urges the State party to:**

(a) **Enhance its efforts to prevent radicalization of children by prioritizing efforts to eliminate the social, economic and political marginalization of certain groups, in particular children and youth who belong to Muslim communities or to the Somali ethnic group;**

(b) **Ensure that counter-terrorism and security measures fully respect the rights of the child provided under the Convention and are sensitive to the potential negative impact on children who are affected by such measures. The Committee wishes to underline that measures that do not fully comply with human rights**

standards would be counterproductive and may contribute further to the radicalization of children;

(c) **Implement the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, as the State party pledged under the Safe Schools Declaration (2015).**

Children belonging to indigenous groups

67. The Committee is concerned about evictions of indigenous peoples from their lands under the pretext of national development and resource conservation, which have resulted in serious violations of the rights of indigenous children, aggravated by poverty, insecurity and conflict among indigenous communities.

68. **With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to:**

(a) **Enact law to operationalize article 63 of the Constitution (2010) which recognizes community land, including ancestral lands and lands traditionally occupied by hunter-gatherer communities;**

(b) **Prevent evictions and displacement of indigenous peoples, including pastoralists, hunger-gatherers and forest people, and provide redress to those evicted or displaced from their lands;**

(c) **Put in place measures for early detection and timely interventions in cases of conflict in areas occupied by indigenous peoples, through peaceful dispute resolution measures and addressing the root causes of these conflicts;**

(d) **Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights;**

(e) **Consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples.**

Children in street situations

69. The Committee is concerned about the increasing number of children in street situations and about the apparent lack of adequate protection measures in place in the State party.

70. **The Committee therefore recommends that the State party:**

(a) **Undertake a systematic assessment of the situation of children in street situations in order to obtain an accurate picture of the root causes and magnitude;**

(b) **Develop and implement, with the active involvement of the children themselves, a comprehensive policy which should address the root causes, in order to prevent and reduce this phenomenon;**

(c) **In coordination with non-governmental organizations (NGOs), provide children in street situations with the necessary protection, including a family environment, adequate health-care services, the possibility to attend school and other social services;**

(d) **Support family reunification programmes, when that is in the best interests of the child.**

Economic exploitation, including child labour, and trafficking

71. The Committee is concerned about the high level of economic exploitation of children in the State party, including:

(a) Worst forms of child labour, such as illicit drug trafficking, begging and scavenging;

(b) Reports of the increasing employment of children as domestic workers.

72. **The Committee recommends that the State party:**

(a) **Harmonize all legislation on child labour with the Convention and with the ILO conventions that the State party has ratified;**

(b) **Expand the application of legal protection from child labour to children working in non-contractual employment;**

(c) **Amend the Employment Act so that children participating in apprenticeships are prohibited from engaging in unsafe industrial undertakings;**

(d) **Pay special attention to combating the use of children as domestic workers;**

(e) **Adopt and implement the Child Labour Policy and the List of Hazardous Occupations Prohibited for Children;**

(f) **Consider ratifying the ILO Domestic Workers Convention, 2011 (No. 189);**

(g) **Seek technical assistance from ILO in this regard.**

Sale, trafficking and abduction

73. The Committee notes the statement of the State party, made at the dialogue, that trafficking of children for various purposes is a serious concern in the State party.

74. **The Committee recommends that the State party implement effectively the Counter Trafficking in Persons Act (2010).**

Administration of juvenile justice

75. The Committee welcomes the efforts made to increase the number of and to rehabilitate courtrooms, and to increase the number of magistrates to adjudicate on matters concerning children. However, the Committee is alarmed that the minimum age of criminal responsibility is still set at 8 years of age, which is well below acceptable international standards. The Committee is also concerned about the following:

(a) Only limited progress has been achieved in establishing a functioning juvenile justice system;

(b) Children are still treated as adults and held together with adults;

(c) There is insufficient information on personnel with specialized training in juvenile justice, including lawyers, judges, prosecutors and public defenders, and correctional officers;

(d) There is insufficient information on legal assistance provided to children in conflict with the law, diversion programmes, and alternatives to detention such as community service and probation.

76. **With reference to the Committee's general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system into line with the Convention, and, in particular, it recommends that the State party:**

(a) **Raise the minimum age of criminal responsibility to an internationally acceptable level, and ensure that all children, by definition persons under 18 years of age, are protected by the juvenile justice system;**

(b) **Adopt a holistic and preventative approach to addressing the problem of children in conflict with the law and the underlying social factors, with a view to supporting children who are vulnerable due to poverty and social exclusion, including by expanding intervention programmes, vocational training and other outreach activities;**

(c) **Systematically build the capacity and enhance the skills and specialization of Children's Court magistrates and prosecutors and all relevant actors in the juvenile justice system, including law enforcement personnel and social workers, on national and international standards on juvenile justice;**

(d) **Expedite the enactment of the National Legal Aid Bill (2014) and provide qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings;**

(e) **Promote restorative justice and alternative measures to detention such as diversion, probation, mediation, counselling, or community service, wherever possible, and ensure that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it;**

(f) **In cases where detention is unavoidable, ensure that adequate facilities exist for children in conflict with the law, and that detention conditions are compliant with international standards, including with regard to access to education and health services;**

(g) **Make use of the technical assistance tools developed by the Inter-agency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime, UNICEF, OHCHR and NGOs, and seek technical assistance in the area of juvenile justice from members of the Panel.**

I. Ratification of the Optional Protocols to the Convention on the Rights of the Child

77. **The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.**

J. Ratification of international human rights instruments

78. **The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights**

instruments to which it is not yet a party, namely the International Convention for the Protection of All Persons from Enforced Disappearance.

79. **The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the report of which is overdue as of 28 February 2004.**

K. Cooperation with regional bodies

80. **The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of the Child, of the African Union, on the implementation of the Convention and of other human rights instruments, both in the State party and in other African Union member States.**

IV. Implementation and reporting

A. Follow-up and dissemination

81. **The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined third to fifth periodic reports, the written replies to the list of issues of the State party and the present concluding observations be made widely available in the languages of the country.**

B. Next report

82. **The Committee invites the State party to submit its combined sixth and seventh periodic reports by 1 September 2021 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.**

83. **The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.**